

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 320

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO UTILITIES; PROVIDING FOR A PUBLIC REGULATION
COMMISSION RULE THAT REQUIRES FUEL, GAS OR PURCHASED POWER COST
RISK-SHARING BY A UTILITY WHEN IT USES AN ADJUSTMENT CLAUSE;
CLARIFYING COMMISSION DISCRETION CONCERNING ADJUSTMENT CLAUSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-8-7 NMSA 1978 (being Laws 1991,
Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates or
charges sought by a public utility, the burden of proof to show
that the increased rate or charge is just and reasonable shall
be upon the utility.

B. Unless the commission otherwise orders, no
public utility shall make any change in any rate that has been

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 duly established except after thirty days' notice to the
2 commission, which notice shall plainly state the changes
3 proposed to be made in the rates then in force and the time
4 when the changed rates will go into effect and other
5 information as the commission by rule requires. The utility
6 shall also give notice of the proposed changes to other
7 interested persons as the commission may direct. All proposed
8 changes shall be shown by filing new schedules that shall be
9 kept open to public inspection. The commission for good cause
10 shown may allow changes in rates without requiring the thirty
11 days' notice, under conditions that it may prescribe.

12 C. Whenever there is filed with the commission by
13 any public utility a complete application as prescribed by
14 commission rule proposing new rates, the commission may, upon
15 complaint or upon its own initiative, except as otherwise
16 provided by law, upon reasonable notice, enter upon a hearing
17 concerning the reasonableness of the proposed rates. If the
18 commission determines a hearing is necessary, it shall suspend
19 the operation of the proposed rates before they become
20 effective but not for a longer initial period than nine months
21 beyond the time when the rates would otherwise go into effect,
22 unless the commission finds that a longer time will be
23 required, in which case the commission may extend the period
24 for an additional three months. The commission shall hear and
25 decide cases with reasonable promptness. The commission shall

.174697.2

underscored material = new
[bracketed material] = delete

1 adopt rules identifying criteria for various rate and tariff
2 filings to be eligible for suspension periods shorter than what
3 is allowed by this subsection and to be eligible for summary
4 approval without hearing.

5 D. If after a hearing the commission finds the
6 proposed rates to be unjust, unreasonable or in any way in
7 violation of law, the commission shall determine the just and
8 reasonable rates to be charged or applied by the utility for
9 the service in question and shall fix the rates by order to be
10 served upon the utility, or the commission by its order shall
11 direct the utility to file new rates respecting such service
12 that are designed to produce annual revenues no greater than
13 those determined by the commission in its order to be just and
14 reasonable. Those rates shall thereafter be observed until
15 changed, as provided by the Public Utility Act.

16 E. Except as otherwise provided by law, any
17 increase in rates or charges for the utility commodity based
18 upon cost factors other than taxes or cost of fuel, gas or
19 purchased power, filed for after April 4, 1991, shall be
20 permitted only after notice and hearing as provided by this
21 section. The commission shall enact rules governing the use of
22 tax, fuel, gas or purchased power adjustment clauses by
23 utilities that:

24 (1) require those clauses to include an
25 appropriate level of fuel, gas or purchased power cost risk-

.174697.2

underscored material = new
[bracketed material] = delete

1 sharing by utilities in order to encourage utilities to
2 evaluate cost volatility and uncertainty in their economic
3 analysis of fuel, gas, purchased power or other power-
4 generating sources and to otherwise encourage efficient
5 operations; and

6 (2) enable the commission to consider
7 periodically at least the following:

8 [~~1~~] (a) whether the existence of a
9 particular adjustment clause is consistent with the purposes of
10 the Public Utility Act, including serving the goal of providing
11 reasonable and proper service at fair, just and reasonable
12 rates to all customer classes;

13 [~~2~~] (b) the specific adjustment
14 mechanism to recover tax, gas, fuel or purchased power costs;

15 [~~3~~] (c) which costs should be included
16 in an adjustment clause, procedures to avoid the inclusion of
17 costs in an adjustment clause that should not be included and
18 methods by which the propriety of costs that are included may
19 be determined by the commission in a timely manner, including
20 what informational filings are required to enable the
21 commission to make such a determination; and

22 [~~4~~] (d) the proper adjustment period
23 to be employed.

24 F. The commission may eliminate or condition a
25 particular adjustment clause if it finds such elimination or

.174697.2

underscored material = new
[bracketed material] = delete

1 condition is consistent with the purposes of the Public Utility
2 Act, including serving the goal of providing reasonable and
3 proper service at fair, just and reasonable rates to all
4 customer classes [~~provided, however, that no such elimination~~
5 ~~or condition shall be ordered unless such elimination or~~
6 ~~condition will not place the affected utility at a competitive~~
7 ~~disadvantage~~]. The commission rules shall also provide for
8 variances and may provide for separate examination of a
9 utility's adjustment clause based upon that utility's
10 particular operating characteristics.

11 G. Whenever there is filed with the commission a
12 schedule proposing new rates by a rural electric cooperative
13 organized under the Rural Electric Cooperative Act, the rates
14 shall become effective as proposed by the rural electric
15 cooperative without a hearing. However, the cooperative shall
16 give written notice of the proposed rates to its affected
17 patrons at least thirty days prior to the filing with the
18 commission, and the commission shall suspend the rates and
19 conduct a hearing concerning the reasonableness of any proposed
20 rates filed by a rural electric cooperative pursuant to
21 Subsections C and D of this section upon the filing with the
22 commission of a protest setting forth grounds for review of the
23 proposed rates signed by the lesser of one percent of or
24 twenty-five members of a customer class of the rural electric
25 cooperative and if the commission determines there is just

.174697.2

underscoring material = new
~~[bracketed material] = delete~~

1 cause for reviewing the proposed rates on one or more of the
2 grounds of the protest. The protest shall be filed no later
3 than twenty days after the filing with the commission of the
4 schedule proposing the new rates. The hearing and review shall
5 be limited to the issues set forth in the protest and for which
6 the commission may find just cause for the review, which issues
7 shall be contained in the notice of hearing. The provisions of
8 this subsection shall not be construed to affect commission
9 authority or procedure to regulate the sale, furnishing or
10 delivery by wholesale suppliers of electricity to rural
11 electric cooperatives pursuant to Section 62-6-4 NMSA 1978. In
12 addition to the adjustments permitted by Subsections E and F of
13 this section, the commission may authorize rate schedules of
14 rural electric cooperatives to recover, without notice and
15 hearing, changes in the cost of debt capital incurred pursuant
16 to securities that are lawfully issued. For the purposes of
17 this subsection, a member of a rural electric cooperative is a
18 member as defined by the Rural Electric Cooperative Act."

19 - 6 -
20
21
22
23
24
25

.174697.2